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United States  
Circuit Court of Appeals

For the Ninth Circuit.

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MOCK GUM YING,

Appellant,

vs.

EDWARD W. CAHILL, as Commissioner of Im-  
migration and Naturalization for the Port of  
San Francisco,

Appellee.

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Transcript of Record

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Upon Appeal from the District Court of the United  
States for the Northern District of California,  
Southern Division.

FILED

OCT 21 1935

PAUL F. O'BRIEN,



United States  
Circuit Court of Appeals

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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ATTORNEYS:

For the Appellant:

STEPHEN M. WHITE,  
550 Montgomery Street,  
San Francisco, California.

For the Appellee:

U. S. ATTORNEY,  
San Francisco, California.

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In the Southern Division of the United States District Court, Northern District of California.

No. 21972-S

MOCK GUM YING,

Appellant,

vs.

EDWARD W. CAHILL, as Commissioner of Immigration and Naturalization for the Port of San Francisco,

Appellee.

PRAECIPE.

To the Clerk of Said Court:

Sir:

Please issue copies of following papers for transcript on appeal:

1. Petition for Writ of Habeas Corpus.
2. Order to Show Cause.
3. Return to Order to Show Cause.

4. Order Denying Petition for Writ of Habeas Corpus.
5. Notice of Appeal.
6. Petition for Appeal.
7. Assignment of Errors.
8. Order Allowing Appeal.
9. Order Transmitting Original Exhibits.
10. Citation on Appeal.
11. Praecipe.

STEPHEN M. WHITE,  
Attorney for Appellant.

[Endorsed]: Filed Aug. 27, 1935. Walter B. Maling, Clerk. [1\*]

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[Title of Court.]

In the Matter of

MOCK GUM YING,

on Habeas Corpus;

No. 34240/7-30; ex SS President  
Coolidge, August 4, 1934.

PETITION FOR WRIT OF HABEAS CORPUS.

To the Honorable, the Southern Division of the  
United States District Court, for the Northern  
District of California:

The petition of Mock Bing Yow respectfully  
shows:

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\*Page numbering appearing at the foot of page of original certified Transcript of Record.



I.

That he is a native citizen of the United States having been born at Monterey, California, on December 4, 1904. [2]

II.

That his father, Mock Jock Fook, was born in China and died in China on November 5, 1916.

III.

That his mother, Kwock Di Ti, was born in the United States and died in China on January 28, 1927.

IV.

That his parents intermarried in the United States prior to 1904; that they departed from the United States for China in 1906.

V.

That on March 4, 1914, there was born in China to your petitioner's parents a daughter by the name of Mock Gum Ying.

VI.

That on the 4th day of August, 1934, the said Mock Gum Ying arrived in the Port of San Francisco, California, and, thereupon, applied to the United States Immigration authorities for admission into the United States; that her application for admission was based upon the ground that she is a citizen of the United States, in that she is the blood daughter of Kwock Di Ti, a native citizen of the United States.

## VII.

That the application for admission of the said Mock Gum Ying was heard by a Board of Special Inquiry, which was convened by the Commissioner of Immigration and Naturalization for the Port of San Francisco; that the said Board of Special Inquiry found and decided that the said Mock Gum Ying was not entitled to admission to the United States, first, because she was not the daughter of her alleged mother, Kwock Di Ti, and, secondly, because the American citizenship of a mother does not, as a matter of law, confer American citizenship upon her minor child, the father of the child being dead. [3]

## VIII.

That an appeal was taken from the decision of the Board of Special Inquiry to the Secretary of Labor; that the Secretary of Labor, through her Board of Review, found and decided that the said Mock Gum Ying was the daughter of her alleged mother, Kwock Di Ti and that the said Kwock Di Ti was a native citizen of the United States, but that the said Mock Gum Ying did not take her mother's citizenship.

## IX.

That the said Mock Gum Ying is now in custody of Edward W. Cahill, Commissioner of Immigration and Naturalization for the Port of San Francisco, at Angel Island, County of Marin, State and Northern District of California, Southern Division thereof, and the said Edward W. Cahill, acting

under the orders of the Secretary of Labor, has given notice of his intention to deport the said Mock Gum Ying to China on the SS. President Coolidge, which sails from the Port of San Francisco, California, on the 22nd day of March, 1935, and, unless this Court intervenes, she will be so deported.

X.

That the Secretary of Labor, in holding that the said Mock Gum Ying is not a citizen of the United States, and the said Edward W. Cahill, in holding her in custody so that her deportation may be effected, are acting in excess of the authority and power committed to them by the statutes in such cases made and provided for and are unlawfully confining, imprisoning and restraining the said Mock Gum Ying, hereinafter referred to as the "detained", of her liberty, in each of the following particulars, to-wit:

1. That your petitioner alleges, as he is advised and believes, that the said detained is an American citizen, by reason of the American citizenship of her mother, Kwock Di Ti, under Section 2172 of the Revised Statutes of the United States, providing as follows: [4]

"The children of persons who have been duly naturalized under any law of the United States, or who, previous to the passing of any law on that subject, by the Government of the United States, may have become citizens of any one of the States, under the laws thereof, being under

the age of twenty-one years at the time of the naturalization of their parents, shall, if dwelling in the United States, be considered as citizens thereof; and the children of persons who now are, or have been, citizens of the United States shall, though born out of the limits and jurisdiction of the United States, be considered as citizens thereof; \* \* \*.”

(8 U. S. C. A. Sec. 7).

That, although it is conceded by the Secretary of Labor that the mother, Kwock Di Ti, of the detained was a native citizen of the United States, nevertheless, it is held by the Secretary of Labor that the detained's American citizenship is not governed by Section 2172 of the Revised Statutes of the United States, *supra*, but that it is governed by the provisions of Section 5 of the Act of Congress approved March 2, 1907, as amended by the Act approved May 24, 1934, which amended Section reads as follows:

“That a child born without the United States of alien parents shall be deemed a citizen of the United States by virtue of the naturalization of or resumption of American citizenship by the father or mother; Provided, That such naturalization or resumption shall take place during the minority of such minor child; And provided further, That the citizenship of such minor child shall begin five years after the time such minor child begins to reside permanently in the United States.”

That your petitioner alleges, as he is advised and believes, that the American citizenship of the detained does not depend upon the naturalization of or resumption of American citizenship by the detained's mother, Kwock Di Ti, for the reason that the said Kwock Di Ti was married to the detained's father prior to March 2, 1907, and that, as a result, the said Kwock Di Ti did not lose her American citizenship by her marriage to an alien, but that she always maintained and kept her American citizenship; that, in making the detained's citizenship depend upon a statute relating wholly to a parent, who was born an alien or who was born an American citizen, [5] but who lost her American citizenship through marriage to an alien, the Secretary of Labor has acted contrary to law.

2. That your petitioner alleges that the detained's brother, Mock Sing Yow, was admitted to the United States in 1920, incident to his arrival from China, by the immigration authorities for the Port of San Francisco, under the status of American citizen, and that in 1932 the said Mock Sing Yow departed from the United States for China on a citizen's return certificate, Form 430, issued by the immigration authorities for the Port of San Francisco and that the said Mock Sing Yow, upon his return to the United States from China in October, 1933, was admitted to the United States by the immigration authorities as an American citizen; that the said Mock Sing Yow was born in China and was a minor at the time he first entered the United States in 1920; that the Secretary of

Labor, in declining and refusing to accord the detained the status of an American citizen, when under identical facts her brother, Mock Sing Yow, has been conceded to be an American citizen, has acted manifestly unfair.

#### XI.

That your petitioner has filed herewith, as Exhibit "A", a copy of the Brief of Washington Counsel filed before the Secretary of Labor in behalf of the detained, and makes the same a part of this petition with the same force and effect as if set forth in full herein.

#### XII.

That your petitioner has filed herewith, as Exhibit "B", a copy of the pertinent part of the Decision of the Secretary of Labor, through her Board of Review, and makes the same a part hereof with the same force and effect as if set forth in full herein.

#### XIII.

That your petitioner is unable to obtain a copy of all the proceedings had before the Board of Special Inquiry and the Secretary [6] of Labor for the reason that the complete record is now in the Department of Labor at Washington, D. C., but your petitioner hereby stipulates that the complete record, when obtained from the Department of Labor by the respondent, may be made a part of this petition and of the proceedings to be had herein.

#### XIV.

That the detained is in detention as aforesaid and for this reason is unable to verify this petition;

that your petitioner, as the brother of the detained, verifies this petition for and in behalf of the detained and in his own behalf.

WHEREFORE, your petitioner prays that a writ of habeas corpus issue herein as prayed for, directed to the said Commissioner of Immigration and Naturalization for the District of San Francisco, commanding and directing him to hold the body of the said detained within the jurisdiction of this Court, and to present the body of the said detained before this Court at a time and place to be specified in said order, together with the time and cause of his detention, so that the same may be inquired into to the end that the said detained may be restored to her liberty and go hence without day.

Dated at San Francisco, California, March 21, 1935.

(Sgd) STEPHEN M. WHITE,  
Attorney for Petitioner. [7]

United States of America  
State of California  
City and County of San Francisco.—ss.

MOCK BING YOW, being first duly sworn, deposes and states as follows:

That he is the petitioner named in the foregoing petition; that the petition has been read and explained to him and he knows the contents thereof; that the same is true to his own knowledge, except those matters stated therein on information and belief and, as to those matters, he believes it to be true.

(Sgd) MOCK BING YOW

Subscribed and sworn to before me this 21st day of March, 1935.

[Seal]                   STEPHEN M. WHITE,  
Notary Public in and for the City and County  
of San Francisco, State of California.

[Endorsed]: Filed Mar. 22, 1935. Walter B. Mal-  
ing, Clerk. [8]

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[Title of Court and Cause.]

ORDER TO SHOW CAUSE.

Good cause appearing therefor and upon reading the verified petition on file herein:

IT IS HEREBY ORDERED that Edward W. Cahill, Commissioner of Immigration and Naturalization for the District of San Francisco, appear before this Court on the 8th day of April, 1935, at the hour of 10 o'clock A. M. of said day, to show cause, if any he has, why a writ of habeas corpus should not be issued herein, as prayed for, and that a copy of this order be served upon the said Com- [9] missioner of Immigration and Naturalization, and a copy of the petition and said order be served upon the United States Attorney for this district, his representative herein;

AND IT IS FURTHER ORDERED that the said Edward W. Cahill, Commissioner of Immigration and Naturalization, as aforesaid, or whoever, acting under the orders of the said Commissioner of Immigration and Naturalization, or the Secretary of Labor, shall have the custody of the said Mock Gum Ying, or the Master of any steamer upon which she may have been placed for deportation by



the said Commissioner of Immigration and Naturalization, are hereby ordered and directed to retain the said Mock Gum Ying within the custody of the said Commissioner of Immigration and Naturalization and within the jurisdiction of this Court until its further order herein.

Dated at San Francisco, this 22nd day of March, 1935.

(Sgd) A. F. ST. SURE,  
United States District Judge.

[Endorsed]: Filed Mar. 22, 1935. Walter B. Maling, Clerk. [10]

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[Title of Court and Cause.]

RETURN TO ORDER TO SHOW CAUSE.

Comes now EDWARD W. CAHILL, as District Commissioner, United States Immigration and Naturalization Service, Port of San Francisco, California, through Arthur J. Phelan, as Inspector in Charge, Legal Division, of the United States Immigration and Naturalization Service at said port, regularly assigned hereunto by said District Commissioner, and for cause why a writ of habeas corpus should not issue herein, shows:

I.

That the person (hereinafter called "said alien") in whose behalf the petition for writ of habeas corpus was filed, arrived at the Port of San Francisco, California, upon a vessel which brought said alien from a foreign port;

## II.

That said alien was upon said arrival at the port of San Francisco, as aforesaid, duly inspected by an Immigrant Inspector of the United States and was duly detained by said Immigrant Inspector for examination by a Board of Special Inquiry in relation to the right of said alien to land in the United States;

## III.

That thereafter a Board of Special Inquiry, duly and regularly appointed and organized, duly and regularly held a hearing as provided by the immigration laws of the United [11] States to determine whether said alien should be allowed to land in and enter the United States, and upon said hearing said Board decided adversely to the admission of said alien into the United States;

## IV.

That thereafter said alien appealed from the decision of said Board of Special Inquiry as aforesaid, to the Secretary of Labor.

## V.

That thereafter said appeal was considered by the Secretary of Labor solely upon the evidence adduced before the Board of Special Inquiry, and upon that consideration of said evidence it was decided and ordered by the Secretary of Labor that the decision of the Board of Special Inquiry excluding said alien from the United States be affirmed.

VI.

That the complete original record of said hearing before the Board of Special Inquiry and of said appeal to the Secretary of Labor and of all proceedings in connection therewith, including the decisions of the Board of Special Inquiry and of the Secretary of Labor, is filed herewith and annexed hereto and made a part hereof as Respondent's Exhibits "A", "B", "C", "D", "E", "F", "G" and "H".

VII.

That by reason of the premises Respondent Edward W. Cahill, as District Commissioner, United States Immigration and Naturalization Service for the Port of San Francisco, California, now detains said alien for deportation to the country whence said alien came, in execution of the final decision, as aforesaid, of the Board of Special Inquiry and of the Secretary of Labor.

WHEREFORE, respondent prays that the petition for writ of habeas corpus herein be denied. [12]

ARTHUR J. PHELAN

Inspector in Charge, Legal Division, as aforesaid, hereunto authorized for and on behalf of Edward W. Cahill, District Commissioner, United States Immigration and Naturalization Service for the Port of San Francisco, California.

[Endorsed]: Filed Apr. 29, 1935. Walter B. Mal-  
ing, Clerk. [13]

[Title of Court and Cause.]

ORDER DENYING APPLICATION FOR  
WRIT, DISMISSING PETITION, ETC.,  
AND ORDERING APPLICANT DE-  
PORTED.

This matter having been heretofore submitted on the application for a writ of habeas corpus (by order to show cause), and the same having been fully considered, it is

ORDERED that the application for a writ of habeas corpus be and the same is hereby DENIED; that the petition for writ of habeas corpus be and the same is hereby DISMISSED; that the order to show cause be and the same is hereby DISCHARGED; and that the applicant be deported by the Immigration Authorities at San Francisco, California.

Dated: May 25, 1935.

WALTER C. LINDLEY

United States District Judge.

[Endorsed]: Filed May 25, 1935. Walter B. Mal-  
ing, Clerk. [14]

District Court of the United States Northern District of California. Southern Division.

AT A STATED TERM of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Saturday, the 25th day of May, in the year of our Lord one thousand nine hundred and thirty-five.

Present: the Honorable WALTER C. LINDLEY, United States District Judge.

No. 21972-S

In the Matter of  
MOCK GUM YING,  
on Habeas Corpus.

Pursuant to a signed order this day filed, it is ordered that the application for a writ of habeas corpus be and the same is hereby denied, that the petition for writ of habeas corpus be and the same is hereby dismissed, that the order to show cause be and same is hereby discharged, and that the applicant be deported by the United States Immigration Authorities, at San Francisco, California. [15]

[Title of Court and Number.]

MOCK GUM YING,

Appellant,

vs.

EDWARD W. CAHILL, as Commissioner of Immigration and Naturalization for the Port of San Francisco,

Appellee.

### NOTICE OF APPEAL.

To the Clerk of the above-entitled Court, to Edward W. Cahill, Commissioner of Immigration and Naturalization, and to H. H. McPike, Esq., United States Attorney, his attorney:

You and each of you will please take notice that Mock Bing Yow, the petitioner in the above-entitled matter, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit, from the order and judgment rendered, made and entered herein on May 25, 1935, denying the petition for a writ of habeas corpus filed herein.

Dated this 12th day of June, 1935.

(Sgd) STEPHEN M. WHITE

Attorney for Appellant.

[Endorsed]: Filed Jun. 13, 1935. Walter B. Mal-  
ing, Clerk. [16]

[Title of Court and Cause.]

PETITION FOR APPEAL.

Comes now Mock Bing Yow, the petitioner in the above-entitled matter, through his attorney, Stephen M. White, Esq., and respectfully shows:

That on the 25th day of May, 1935, the above-entitled Court made and entered its order denying the petition for a writ of habeas corpus, as prayed for, on file herein, in which said order in the above-entitled cause certain errors were made to the prejudice of the appellant herein, all of which will more fully appear from the assignment of errors filed herewith.

WHEREFORE, the appellant prays that an appeal may be granted in her behalf to the Circuit Court of Appeals of the United States [17] for the Ninth Circuit thereof, for the correction of the errors as complained of, and further, that a transcript of the record, proceedings and papers in the above-entitled cause, as shown by the praecipe, duly authenticated, may be sent and transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit thereof, and further, that the said appellant be held within the jurisdiction of this Court during the pendency of the appeal herein, so that she may be produced in execution of whatever judgment may be finally entered herein.

Dated at San Francisco, California, June 12th, 1935.

(Sgd) STEPHEN M. WHITE

Attorney for Appellant.

[Endorsed]: Filed Jun. 13, 1935. Walter B. Mal-  
ing, Clerk. [18]

[Title of Court and Cause.]

### ASSIGNMENT OF ERRORS.

Now comes the appellant, Mock Gum Ying, through her attorney, Stephen M. White, Esq., and sets forth the errors she claims the above-entitled Court committed in denying her petition for a writ of habeas corpus, as follows:

#### I.

That the Court erred in not granting the writ of habeas corpus and discharging the appellant, Mock Gum Ying, from the custody and control of Edward W. Cahill, Commissioner of Immigration and Naturalization at the Port of San Francisco. [19]

#### II.

That the Court erred in not holding that it had jurisdiction to issue the writ of habeas corpus as prayed for in the petition on file herein.

#### III.

That the Court erred in not holding that the allegations set forth in the petition for a writ of habeas corpus were sufficient in law to justify the granting and issuing of a writ of habeas corpus.

#### IV.

That the Court erred in not holding that the appellant was a citizen of the United States by virtue of the American nativity and citizenship of her mother. (Sec. 2172 of Revised Statutes.)



V.

That the Court erred in not holding that the Secretary of Labor, in declining to accord the appellant the status of an American citizen, acted contrary to law.

WHEREFORE, appellant prays that the said order and judgment of the United States District Court for the Northern District of California made, given and entered herein in the office of the Clerk of said Court on the 25th day of May, 1935, denying the petition for a writ of habeas corpus, be reversed and that she be restored to her liberty and go hence without day.

Dated at San Francisco, California, June 12th, 1935.

(Sgd) STEPHEN M. WHITE,  
Attorney for Appellant.

[Endorsed]: Filed Jun. 13, 1935. Walter B. Mal-  
ing, Clerk. [20]

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[Title of Court and Cause.]

ORDER ALLOWING APPEAL.

It appearing to the above-entitled Court that Mock Bing Yow, the petitioner herein, has this day filed and presented to the above Court his petition praying for an order of this Court allowing an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and order of this Court denying a writ of habeas corpus herein and dismissing his petition for said writ, and good cause appearing therefor.

IT IS HEREBY ORDERED that an appeal be and the same is hereby allowed as prayed for herein; and

IT IS HEREBY FURTHER ORDERED that the Clerk of the above-entitled Court make and prepare a transcript of all the papers, proceedings [21] and records in the above-entitled matter and transmit the same to the United States Circuit Court of Appeals for the Ninth Circuit within the time allowed by law; and

IT IS FURTHER ORDERED that the execution of the warrant of deportation of said Mock Gum Ying, be and the same is hereby stayed pending this appeal and that the said Mock Gum Ying, be not removed from the jurisdiction of this Court pending this appeal.

Dated at San Francisco, California, June 13, 1935.

(Sgd) CURTIS D. WILBUR,

United States Circuit Judge.

[Endorsed]: Filed Jun. 13, 1935. Walter B. Maling, Clerk. [22]

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[Title of Court and Cause.]

ORDER TRANSMITTING ORIGINAL  
EXHIBITS.

GOOD CAUSE APPEARING THEREFOR, IT IS HEREBY ORDERED that the Immigration Records filed as Exhibits herein, may be transmitted by the Clerk of the above-entitled Court to and filed with the Clerk of the United States Circuit

Court of Appeals for the Ninth Circuit to be taken as a part of the record on appeal in the above-entitled cause with the same force and effect as if embodied in the transcript of record and so certified by the Clerk of this Court.

Dated this 13 day of June, 1935.

(Sgd) CURTIS D. WILBUR,  
United States Circuit Judge.

[Endorsed]: Filed Jun. 13, 1935. Walter B. Maling, Clerk. [23]

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[Title of Court and Cause.]

CITATION ON APPEAL.

United States of America—ss.

The President of the United States, to Edward W. Cahill, Commissioner of Immigration and Naturalization, Port of San Francisco, and H. H. McPike, United States Attorney,  
GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, State of California, within 30 [24] days from the date hereof, pursuant to an order allowing an appeal of record in the Clerk's office of the United States District Court for the Northern District of California, wherein Mock Gum Ying, is appellant and you are appellee, to show cause, if any, why the decree rendered against the said appellant,

as in the said order allowing appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable Curtis D. Wilbur, United States Circuit Judge for the Southern Division of the Northern District of California, this 13 day of June, 1935.

CURTIS D. WILBUR,  
United States Circuit Judge.

Receipt of copy of the within Citation on Appeal is hereby admitted this 13th day of June, 1935.

H. H. McPIKE,  
Attorney for Appellee.

[Endorsed]: Filed Jun. 13, 1935. Walter B. Maling, Clerk. [25]

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District Court of the United States, Northern  
District of California.

CERTIFICATE OF CLERK TO TRANSCRIPT  
OF RECORD ON APPEAL.

I, Walter B. Maling, Clerk of the United States District Court, for the Northern District of California, do hereby certify that the foregoing 25 pages, numbered from 1 to 25, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case of MOCK GUM YING, Appellant vs. Edward W. Cahill, as Commissioner of Immigration, etc., No. 21972-S., as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on



